IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

Bail Appl..No. 7589 of 2007()

(CRIME NO.383/2002 OF MATHILAKAM POLICE STATION)

PETITIONER: SECOND ACCUSED:

IBRAIM, AGED 57 YEARS, S/O.KUNJU MOHAMMED, PATHIYASSERY HOUSE, PAPPINIVATTOM VILLAGE, KODUNGALLUR TALUK, THRISSUR DISTRICT.

BY ADV. SRI.BABU KARUKAPADATH

RESPONDENT: COMPLAINANT:

STATE OF KERALA REPRESENTED BY SUB INSPECTOR OF POLICE, MATHILAKAM THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J.

B.A.No.7589 of 2007

Dated this the 7th day of December 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Section 225B I.P.C. He had allegedly escaped from the custody of the Amen of the Family Court who had allegedly arrested him in connection with the matrimonial proceedings. Crime was registered in 2002. Cognizance was taken. At the crime stage, the petitioner was enlarged on bail. He could not later appear before the learned Magistrate. After cognizance, reckoning him as absconding accused, the case has been transferred to the list of long pending cases. Coercive processes have been issued against the petitioner. The petitioner finds such coercive processes chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful or deliberate. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered

by the learned Magistrate on merits, in accordance with law and expeditiously. The learned counsel for the petitioner submits that the matrimonial proceedings before the Family Court has been settled and no such proceedings is pending now. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application

for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007